

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs July 28, 2009

**STATE OF TENNESSEE v. LINDA DIANE HILL**

**Appeal from the Criminal Court for Hamblen County**  
**No. 06CR439     John F. Dugger, Jr., Judge**

---

**No. E2008-01856-CCA-R3-CD - Filed March 29, 2010**

---

The Defendant, Linda Diane Hill,<sup>1</sup> was convicted of premeditated first degree murder, for which she received a life sentence. The Defendant appeals the judgment, arguing that (1) the convicting evidence is insufficient; (2) the trial court erred in admitting expert testimony; (3) the trial court erred in allowing the State's expert witnesses to remain in the courtroom during the proof; and (4) the trial court erred in allowing a State's expert witness to testify during the State's rebuttal proof. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Greg W. Eichelman, District Public Defender, for the appellant, Linda Diane Hill.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany Faughn, Assistant Attorney General; and Al Schmutzer, Attorney General, Pro Tem, for the appellee, State of Tennessee.

**OPINION**

The Defendant was convicted of the first degree murder of her husband, Shannon Hill. The Defendant did not dispute that she shot and fatally wounded her husband, but she contended she did so in self-defense, while the State maintained that it was a premeditated and intentional killing.

---

<sup>1</sup>Some pleadings, orders, and other documents in the record refer to the Defendant as Linda Diana Hill or Linda Dianna Hill. We use the name provided in the indictment.

At the trial, the State played an audio recording of the Defendant's 9-1-1 call placed on June 14, 2006 at 2:43 a.m. In the call, the Defendant reported that she shot her husband, that he was lying on the floor, and that she thought he was dead. The Defendant also reported that the victim kept hurting her and that she was afraid he was going to kill her because she wanted to leave. She said she told the victim that "the law was gonna put him in jail, and he was mad" at her. She said the victim made a statement that "the devil's taking him" and that he was looking for his mother. The Defendant asked for help for the victim.

Deputy Eddie Hefner of the Hamblen County Sheriff's Department testified that he responded to the Defendant and the victim's home in the early morning hours of June 14, 2006. He said the Defendant was on the front porch wearing a nightgown when he arrived. He said she was on the telephone with 9-1-1. He said he stepped inside and saw the victim lying on the foyer floor and looked into the bedroom and saw the gun on the floor. He observed that the blood running down the victim's left shoulder appeared to be dry. He said there was an area where a dried clot was suspended. He said he observed the victim for at least a minute and did not see any signs of life. He said that after Lieutenant Mark Snowden arrived, he searched the house for other suspects or victims. Deputy Hefner said the home's thermostat was set on seventy-two degrees.

Deputy Hefner testified that after searching the house, he spoke with the Defendant, who told him that she shot the victim when he was on top of her trying to choke her. He said that he advised the Defendant of her rights and that she signed a rights waiver.

Lieutenant Mark Snowden of the Hamblen County Sheriff's Department testified that he arrived at the Defendant and the victim's home at 2:58 a.m. on June 14, 2006. He said that Deputy Hefner was on the porch with the Defendant. He said he went inside, where he saw the victim's naked body on the foyer floor with blood clots "stringing from [the left side of] his body" and dried blood around the left arm. He said he saw the gun in plain view on the bedroom floor. He said that after other officers arrived, he checked all the rooms in the house to make sure no one else was present.

Pam Taylor testified that at the time of the victim's death, she was a detective sergeant with the Hamblen County Sheriff's Department, although she was no longer employed in law enforcement. She went to the Defendant and the victim's home in the early morning hours of June 14, 2006. She said she saw the victim lying in the foyer and noticed the dried blood.

Ms. Taylor testified that she had the Defendant sign a consent to search form for the home. She later interviewed the Defendant at the sheriff's department. She said the Defendant told her the following: Around 10:00 p.m., the victim brought food from Krystal and beer, and the Defendant and the victim ate on the porch. The Defendant went into the

bedroom and pushed a chair against the door. The Defendant talked to Clark Napier by telephone after the victim suggested she call Napier. The victim pushed the door open and came into the bedroom. The victim brought the Defendant a Coke and became mad when the Defendant dropped it on the floor. The victim tried to undress the Defendant, and the Defendant resisted and went into the bathroom. The victim was mad. The Defendant came out of the bathroom wearing a robe, which the victim made her remove. The two of them were in the bed, and the victim tried to kiss the Defendant. The Defendant suggested that the victim get help, and the victim became mad, said he was going to kill the Defendant, and tried to kiss her. The Defendant bit the victim's lip, finger, and shoulder. The victim was on top of the Defendant trying to have sex, but he was unable to perform. The victim tried to pull the Defendant's legs apart, and she tried to move off the bed. The victim started choking the Defendant. The Defendant told the victim she wanted to leave and said that if he did not allow her to do so, she would get him in trouble for forging his father's signature on loan documents. The victim, who was above the Defendant on his knees, became very angry and spit. The Defendant grabbed the gun from under her pillow and told the victim to stop or she would shoot him. The victim said, "You don't have the b----." The Defendant shot the victim twice. The Defendant thought the victim was going to kill her. The victim said, "Oh, God, what have you done?" and requested the Defendant call 9-1-1. The victim got up and went into the hall, but the Defendant stayed in the bedroom. The Defendant heard a gurgle and made about three trips to check on the victim. She heard him fall, and then she called 9-1-1. She could hear the victim making noises while she was on the telephone. The Defendant unlocked the door and followed the 9-1-1 operator's instructions to put down the gun. The Defendant had slept with the gun under her pillow for about three weeks, following an incident in which the victim pulled a gun on her in the Pizza Inn parking lot. The gun was fully loaded minus one round.

Ms. Taylor testified that the Defendant gave her the password to her telephone and told her that Mr. Napier's area code was 304. Ms Taylor said the Defendant mentioned having shown bruises to nurses in Dr. Lafferty's office in Kentucky but having prohibited them from calling the authorities. Ms. Taylor said the Defendant reported that she and the victim had been married for about eighteen months and that they dated for four or five months before that.

Ms. Taylor testified that the Defendant told her that three weeks before the crime, the victim pulled a gun on the Defendant in the Pizza Inn parking lot. The Defendant said she told Pizza Inn employees about the incident.

Ms. Taylor testified that the Defendant claimed that the victim had threatened to have the Defendant's son taken from her because the Defendant used drugs, which she claimed the victim bought for her. The Defendant told Ms. Taylor that she had not used drugs for

several days before the crime. Ms. Taylor said the Defendant reported that the victim was very jealous and controlling and that he would follow her.

Ms. Taylor testified that despite the Defendant's reports she had been struck in the eye by the victim, Ms. Taylor saw no signs of injury. She identified photographs she took of the Defendant. She said she did not see any bruising, red places, or marks on the Defendant. Ms. Taylor acknowledged that the Defendant's neck was more brown on one side, but she attributed this to the Defendant's tanning bed. She noted that the Defendant had blood on her feet and was wearing an ankle bracelet, a necklace, and earrings.

Ms. Taylor testified that the Defendant told her about her friend from Kentucky, Shante, with whom the Defendant arranged a sexual tryst involving Shante, the Defendant, and the victim. She said the Defendant acknowledged relationships with Eddie Taylor and Clark Napier during her marriage. She said she learned from the Defendant that Taylor and Napier's telephone numbers were stored in the Defendant's phone under the names "Missy" and "Carla." She said that Tim Marshall's telephone number was stored in the Defendant's phone as "Rachel" and that the Defendant identified Marshall as someone she knew "through the restaurant." She said there was a person named Matt whose number was stored as "MMM," whom the Defendant also identified as someone she knew through Pizza Inn. She said the Defendant told her that she had these men's phone numbers stored in this manner because the victim was jealous and checked the Defendant's phone.

Ms. Taylor testified that she obtained the Defendant's cell phone records. She said that between June 12 and June 14, there were thirty-one calls and twenty-two text messages between the Defendant and Mr. Napier. She said she reviewed the text messages, which included professions of love by both parties and a message sent by the Defendant that said, "I can't wait to spend the rest of my life making you happy." The latter message was sent on June 12 at 9:26 p.m. There were other messages the Defendant sent to Mr. Napier on June 13 which indicated that the Defendant and the victim were having disagreements and that the Defendant was amorous toward Mr. Napier. In a text message in the early morning hours of June 14, the Defendant requested a picture of Mr. Napier that she could show her family. Ms. Taylor said there were also notes stored in the Defendant's cell phone. These included statements that if anything happened to the Defendant, someone should inquire about it, that the Defendant was worried because the victim had been having violent outbursts, that the victim threatened to kill her, himself, and her family, that the victim thought the Defendant was sleeping with someone named Brian, and that the victim had pulled a gun on the Defendant and said, "Someday." She said there was a photograph of the Defendant's breasts saved in the Defendant's phone.

Ms. Taylor testified that the sheriff's department investigated the alleged forgery by the victim on loan documents. She said they determined that the victim forged his father's name on the documents.

Ms. Taylor testified that other officers searched the home immediately following the crime. She admitted that she was with a group of officers who returned to the home a few days later for a further search and that by this time, people other than law enforcement officers had had access to the home.

Detective David Stapleton of the Hamblen County Sheriff's Department testified that he went to the victim's home on June 14, 2006. He identified a diagram of the home and photographs taken inside the home. He said they found a Colt .380 handgun with one live round in the chamber and two live rounds in the clip. He said they found blood, a shell casing, and the Defendant's cell phone on the bed in the master bedroom. He said there was an open beer and an unopened Diet Coke in the bedroom. The Diet Coke was on the Defendant's side of the bed. He said they found a shell casing on the floor under the bed and drops of blood on the wall and a door. He said the blood in the bedroom was tested and was determined to have the victim's DNA.

Detective Stapleton testified that the victim's body was in the floor in the foyer. He said clotted blood was on both sides of the victim and a dry clot was hanging but not touching the floor with a puddle of moist blood on the floor below it. He said he saw two wounds on the victim's chest. He said they found two shell casings, as well. He acknowledged that he learned a day or two later that four shots had been fired. Detective Stapleton testified two empty beer bottles and an empty Diet Coke can were in the kitchen trash can.

Detective Stapleton testified that the officers went back to the home on June 19. He identified photographs taken during this search. He said that on this occasion, they located a shell casing on the baker's rack in the master bedroom. Detective Stapleton testified that he took the photographs of the scene with a two megapixel digital camera. He acknowledged that he had no training in photography. He said he used no extra lighting, other than the home's overhead lighting. He said the photographs accurately represented what he saw.

Detective Stapleton testified that he went into the garage, where there were two cars. He said that a safe was in the garage and that the safe was closed on June 14 but open on June 19. He said a car was parked close to the safe on June 19 and that Pam Taylor put the camera inside the safe to photograph its contents, which included weapons. He said there was not a refrigerator in the garage. He denied having seen two garages.

TBI Special Agent Don Carman testified as an expert in forensic firearms identification. He identified the Colt .380 semi-automatic pistol that was recovered from the Defendant and the victim's home. He said the magazine held seven rounds. He said the gun had a safety which would require one trigger pull to disengage, after which each trigger pull would result in one shot being fired.

Special Agent Carman testified that he examined three bullets that were removed from the victim's body during the autopsy. He said he performed test firings of the weapon and determined that the bullets were fired from the .380 pistol. He also tested the firing of the weapon to determine the pattern that would be left when the weapon was fired from various distances.

Doctor Darinka Mileusnic-Polchan testified as an expert witness in forensic pathology. She performed the autopsy of the victim. She said the victim had multiple gunshot wounds, appearing on the right upper chest, the left upper chest, the upper abdomen between the rib cage, and the left back. She said that all of the wounds except the one to the upper abdomen were from a bullet fired from close range. The two chest wounds were from bullets fired from a closer range than the wound to the back. She said there was a significant amount of blood staining on the victim's left arm, back, and lower extremities.

Doctor Mileusnic-Polchan testified that there was minor bruising on the back of the victim's right hand. She said no other scratches, bite marks, or bruises were on his body. She said that one of the chest wounds was from a bullet fired from a distance of one to two inches and that the other chest wound was from a bullet fired from a distance of less than one inch. She said that the abdominal wound was from a bullet fired from more than thirty-six inches and that the wound to the back was from a bullet fired from about ten inches. She said the right chest wound would have caused "significant spillage or spurting of blood" and would have caused the most damage.

Doctor Mileusnic-Polchan testified that she viewed photographs from the victim's home. She said the right chest wound was the only wound which could have produced the blood depicted on the doorway from the foyer to the dining room. She said she would expect the initial blood spatter from the wound to be "major" with bleeding continuing thereafter. She said that in her opinion, the right chest wound occurred in the hallway or the foyer, not the bedroom. She also stated that based upon the photographs of the scene, it was her opinion that shots were fired in two areas of the home, the bedroom and the living room.

Doctor Mileusnic-Polchan testified that the victim's cause of death was multiple gunshot wounds. She said that after his injuries occurred, he could have lived for one-half an hour or longer. She said the victim would have been able to move after being injured.

Doctor Mileusnic-Polchan testified that she had reviewed the statements taken by law enforcement in which the Defendant recounted that the victim was on top of the Defendant's lower body and to her side, choking her. She said that in this position, it would have been impossible for the Defendant to have shot the victim in the right chest from the angle of the victim's wound.

Paulette Sutton testified as an expert in blood stain pattern analysis. She stated that she consulted with Dr. Mileusnic-Polchan and learned that the victim had injured arteries in epigastric and right chest regions. She said that in her opinion, the blood stain pattern on the dining room wall was consistent with arterial gushing. She also concluded that the victim received an additional injury in the dining room, beyond that which occurred in the bedroom.

Ms. Sutton testified about her observations of the blood patterns she viewed in the photographs of the scene. She said she concluded that based upon the blood clotting that was visible, the victim was on his left side "for a period of time, long enough to allow for clotting to begin to occur." She said that the clinical normal period of time for blood flow stopping due to clotting was six to eight minutes and that most blood stain pattern analysts used a range of three to five minutes.

Ms. Sutton testified that she was asked to determine the period of time that had passed based upon the dried blood clot on the victim's left side. She said she was unable to find published data on the length of time needed for a blood clot to dry. Therefore, she designed an experiment taking into account temperature, humidity, amount of air flow, amount of blood, and form of blood, all of which were stated in published literature to be factors in the length of time necessary for blood to dry. She obtained a sample of her own blood from her doctor. At her home, she conducted her experiment in a room of her home that was 71.8 degrees, as close as possible to the 72-degree temperature that was reported to her from the crime scene by Deputy Hefner. She said she determined the size of the clot by comparing it to an EKG pad of similar size that was visible in the photographs from the scene and used a clot of the same dimensions for the experiment. She said she sat beside an air conditioner intake in her home for the experiment because the victim's body was found near an intake vent. She placed the blood clot on her skin to correlate with the surface the target clot was on. She said that it took an hour before she had "good characteristics of drying" and an hour and a half before the clot was "significantly dry." She said that based upon the results of her experiment, it was her opinion that the blood clot that Officers Snowden and Hefner saw at 2:48 a.m. had been there for at least an hour.

On cross-examination, Ms. Sutton acknowledged that she did not view the scene in person. She said she relied on the photographs, videos, and the memory of the officers who were at the scene. She also acknowledged that as best she knew, her testimony was the first

time the results of an experiment involving blood clot drying on human skin had been presented in court. She acknowledged that the dryness of the clot was not quantified by the officers other than that they said it looked dry, and she said she gauged her own experiment by her visual observations.

Ms. Sutton testified that although the photographs were from a digital camera with only two megapixel capability, she did not have any difficulty viewing them. She said the photographs were very good.

TBI Special Agent Dawn Sweeney testified as an expert witness in toxicology. She examined a blood sample taken from the victim, which was negative for the presence of drugs.

TBI Special Agent Jennifer Hall testified as an expert witness in toxicology. She examined a blood sample taken from the victim, which was negative for the presence of alcohol. She said she could not tell whether there had been alcohol in the victim's blood an hour earlier. She said that once a person was dead, any alcohol in the body would not dissipate.

Ashley Reynolds testified that she was employed at Pizza Inn in June 2006. She said she knew the victim and the Defendant. She said that while she was employed at Pizza Inn, she and the Defendant had conversations in which the Defendant complained about the victim. She said that the victim frequently called the Defendant at the restaurant and that the couple argued constantly. She said that on some occasions when the victim called, the Defendant would tell her to say the Defendant was with a customer or in the restroom. She said that the victim would come to the restaurant when he was not able to contact the Defendant. She said that "just a few times" a month before the victim's death, she heard the Defendant make statements about wanting to kill the victim. She said the victim showed her a solid bruise on the back of her arm, which the Defendant said was from the victim having grabbed her. She said there was an occasion when the Defendant came to work with a cut on her head and said she had fallen after being hit by the victim.

Clark Napier testified that he was a train engineer and that he met the Defendant in a "restaurant-type bar" in Williamson, West Virginia in 2006. He said they had a relationship, beginning with her going home with him the night they met. He said that the next day, she left to visit her family but returned that night. He said that this was the last time he saw her before the crime but that they stayed in touch after she left. He said he did not find out for two or three days after meeting the Defendant that she was married, but he later said he found out the day after he met the Defendant. He said the Defendant described her marriage to him



as “an arrangement and that she wanted out of it if she could.” He said he told the Defendant she could stay at his house.

Mr. Napier testified that he was contacted by the railroad police at 3:30 or 4:00 p.m. the afternoon after the victim’s death and asked to contact the Hamblen County Sheriff’s Department. He said he had last spoken with the Defendant around midnight on June 13. He said they sent text messages that evening about the Defendant’s wanting a photograph of him that she could show her family.

Mr. Napier testified that the Defendant told him she had locked herself in the bedroom and that the victim was being a “d—.” He first said this occurred on June 13 but later acknowledged that this was June 12, the night before the victim’s death. He then said there was nothing in his communications with the Defendant on the night of the victim’s death to indicate that there was a problem. He said that after receiving a text message from the Defendant at 1:35 a.m. on June 14 that said “Hello,” he did not hear from her again. He said he responded with a message at 1:50 a.m. that said, “Can you call?” but that he did not receive a response.

Mr. Napier testified that he had sexual relations with the Defendant on the night he met her. He said he had a “mark” on his chest. He acknowledged having told Detective Taylor that the Defendant bit his lip and neck and that she bit his shoulder or chest.

Michelle Adams testified that in her capacity as a physician assistant, she examined the Defendant on June 16, 2006, at the request of the Defendant’s attorney. She said the visit was due to the Defendant’s mental state. She said she did a basic skin examination and noted contusions on the Defendant’s upper arms and inner thighs. She said the Defendant also had a healing laceration on the parietal area of the scalp. She recalled faint bruises around the Defendant’s neck, but she acknowledged that she did not make a note in the medical records of the neck bruising. She said she had a follow-up visit with the Defendant about depression and anxiety but did not make any notes about any physical injuries at that visit.

Penny Bailey testified that she had been the Defendant’s hairdresser at a salon in Knoxville. She recalled having seen places where the Defendant’s hair had been pulled out and broken. She said she also saw bruises on the Defendant’s eye and left arm. She said the Defendant’s husband came with the Defendant and told the witness how to style the Defendant’s hair. She said the Defendant would talk when her husband was not present but would not say anything if he was there.

Tina Pollard testified that she was the Defendant’s sister. She said she worked at Pizza Inn, which she said she owned with her husband, the Defendant, and the victim. She

said she saw the victim pull a gun on the Defendant in the parking lot of the restaurant. She said the Defendant showed her bruises on her arms and called her in the middle of the night after arguing with the victim. She said that she asked the Defendant to come to her home but that the Defendant did not do so because she was afraid.

Ms. Pollard testified that the victim called her frequently and said he had no one else to talk to. She said that he would say he was going to kill himself and that she was concerned for him. She said that the victim was concerned about his relationship with the Defendant and that he became possessive of the Defendant. She said she was not aware of the Defendant's having any extramarital relationships. She said that she spoke with the victim about three weeks before his death and that he was trying to keep the marriage together. She said the Defendant was trying to keep the marriage together at that point, too.

Carla Whitehead testified that she had been employed at Pizza Inn for a couple of months and knew the Defendant and the victim. She said that on one occasion, she saw the victim hiding behind a radio and that when she told the Defendant, the victim and the Defendant had an argument. She said the victim did not want the Defendant sitting with the employees. She said she noticed the Defendant crying and with bruises on occasion. She said that she only saw the victim at the restaurant three times but that he called the Defendant's cell phone frequently. She described the Defendant as being upset frequently and said it kept getting worse.

Chad Sparks, the Defendant's son, testified that he lived with the Defendant and the victim during their marriage. He said the couple's relationship was fine at first but that they later argued. He said the Defendant and the victim had physical altercations. He recalled one occasion when he was in the couple's bedroom when they were fighting. He said the victim pushed the Defendant, he pushed the victim, the victim pushed him, and the Defendant pushed the victim. He said that he heard the victim make statements to the Defendant a couple of times that he could have her killed for \$500 and that he would hurt her children if she left him.

Mr. Sparks testified that he spent the night of the victim's death at his cousin's home. He said he did not go back to the Defendant and the victim's home that night after the crime. He said that he spoke with the Defendant the next morning and that she told him she and the victim had argued, that the victim was beating and choking her, and that she was afraid the victim was going to kill her.

Mr. Sparks testified that there were guns in a safe in a garage of the house and in the Defendant's and the victim's cars. He said there were two garages in the house, one in which the cars and safe were kept, and another that had a refrigerator or freezer in it.

Linda Priest testified that she was the Defendant's mother. She said the Defendant and the victim seemed happy for the first year of their marriage. She said that at first, the victim treated the Defendant well. She said she was aware of times the victim and the Defendant came to a Super 8 motel near her home in Kentucky but did not visit her. She said that on one occasion, she drove by the motel and saw their car. She said she obtained their room number from the clerk and knocked on the door, which had a "Do Not Disturb" sign. She said the victim opened the door. She said she saw the Defendant in bed with black eyes. She said the victim said he had not been to see her because the Defendant had been sick. She said he also made a comment about it doing no good to put a "Do Not Disturb" sign on the door. She said that after this event, she did not see the victim and the Defendant together much and often was unable to reach them by telephone.

Nichole Maynard testified that the Defendant was her mother-in-law. She could not recall whether she had seen the victim and the Defendant argue, although she recalled that the victim would be angry because the Defendant wanted to spend time with her family. She said she had seen bruises on the Defendant three or four times. She said that when the Defendant was at her home, the victim would call repeatedly for the Defendant. She said the last time she saw the victim was when he came to her house in Kentucky looking for the Defendant the weekend before the crime. She said he was mad that he had not talked to the Defendant and that she had come to Kentucky without him. She said that the victim came to her home about 2:00 a.m. and that she was uncomfortable with the victim's being at her home without her husband there. She denied knowing that the Defendant was with Clark Napier that night.

Alena Nichole Jarrell testified that she was the Defendant's sister. She said the two of them talked almost every day. She said she did not allow the Defendant to come live with her because it would have strained her marriage.

Donna Maynard testified that she was the Defendant's sister. She said that on the weekend before the crime, the Defendant had been in Kentucky and the victim had been calling her. She said her sister Tina also called her and was upset and afraid for the Defendant.

The Defendant testified that she met the victim through her sister Tina when she came to Tennessee in August 2004. She said that the victim was her sister's boss and that her sister worried about him because he was lonely after his wife's death. She said she and the victim spent the first several days after they met dating and getting to know each other and that she applied for a job at Pizza Inn, although the victim did not want her to work but to spend time with him. She said that the victim asked her to marry him within a week but that she told him they needed to wait because he was still grieving. She said the victim would get "down"

after being happy at times, but she never felt threatened by him. She described their relationship as a “fairy tale” and said the victim bought her gifts frequently, including jewelry and a car. She said she helped make the car payments. She said she and the victim were married on December 24, 2004. She said her son moved to Tennessee in December.

The Defendant testified that the victim’s home, in which she lived, had two garages. She said there were cars in a two-car garage and appliances, groceries, and exercise equipment in a single garage. She said she could tell when she first saw the victim’s home that he was a person with financial ability.

The Defendant testified that several guns were in the home. She said that when she was leaving to take her daughter-in-law to Kentucky, the victim gave her a gun and told her to keep it within arm’s reach at all times. She said the victim taught her how to use the gun. She said that after that, she kept the gun with her.

The Defendant testified that the victim gave her breast implants as a gift before they were married. She said the victim went shopping with her and chose her clothes and told the Defendant’s hairdresser how to style her hair.

The Defendant testified that she began working at Pizza Inn in January 2005. She said that it was later that she became a partner in the ownership of the business with the victim, the Defendant’s sister, and her sister’s husband.

The Defendant testified that her relationship with the victim began to change around Valentine’s Day 2005. She said she came home late and found the victim angry. She said he accused her of ruining the dinner he had planned and started throwing food at her. She said the victim later apologized.

The Defendant testified that in late March 2005, she and the victim were at a karaoke event. She said the victim was drinking and talking about his fantasies. She said he asked her whether she was attracted to a girl who had been singing and said he thought the girl was beautiful. She said that a couple of months later when they were on vacation in Florida, the victim again mentioned his sexual fantasies. She said that after they returned from Florida, the victim said that she “owed” him for replacing her car stereo after her car had been stolen and wanted her to have sex with another man while he watched.

The Defendant testified that she told the victim about her past, which included sexual experimentation. She said she just wanted a normal life with him and for her son to be in school.

The Defendant testified that the victim wanted to control every situation and that he even did the grocery shopping. She said they were arguing more frequently and that the victim would cry after becoming angry with her.

The Defendant testified that in the fall of 2005, she was still working at Pizza Inn. She said the victim did not work at the store but would make calls for the business from home. She said that when she was working, the victim would park across the street and watch her or would drive around the restaurant's parking lot. She said that they were arguing off and on during this time and that afterwards the victim would apologize and bring her gifts at work. She said that at this point, she did not feel threatened by the victim.

The Defendant testified that in November 2005, she finally agreed to indulge the victim's sexual fantasies involving a third person. She said the couple began traveling to Kentucky and Virginia, where the victim would go to clubs and bring men back to a hotel room to have sex with her while the victim watched and instructed their actions. She said the victim would give her drugs or alcohol "so [she] would be okay to do it." The Defendant said she agreed to this the first time because she was scared and wanted to have a home for her son. She said that she thought she could get the situation under control and make the victim happy and that she would not have to do it again. She said the victim, however, wanted to continue. She said that when she did not do exactly what the victim wanted, she would "end up with a black eye or something" and they would stay out of state until the injury healed. She said that on one occasion, she asked her friend Shante Maynard to have a sexual encounter with the couple to fulfill a fantasy of the victim's. She said that her friend agreed to it but became frightened and asked to leave when the victim whipped the Defendant with his belt and put his gun inside the Defendant. She said that after this occasion, the victim did not ask her to be with another woman but that the encounters with men did not stop.

The Defendant testified that the victim became more possessive and controlling and complained that the Defendant would not do what he said. She said the business was starting to fail but that the victim was unconcerned. She said the couple argued because the victim wanted to go to Kentucky to find sex partners.

The Defendant testified that around Easter 2006, she spoke with her family about leaving the victim. She said she asked one of her sisters about living with her but that the sister said she could not handle the additional stress given that she was already caring for five children and a parent. She said she also talked to the victim, who said things could change. She said things did change for a time. However, she described their arguments during this time as involving the victim's pushing, slapping, and tying her to the bed.

The Defendant testified that in the spring of 2006, she learned the victim had forged his father's name on a bank note for the business. She said the victim told her his father would kill him if he learned of this.

The Defendant testified that she had sex with a former boyfriend, Eddie Taylor, shortly before Valentine's Day 2006. She said that after she came home, she talked to Mr. Taylor on the phone in front of the victim and that the victim "was very upset that he didn't have no say in it." She said the victim wanted her to stay with him but wanted her to be happy. She said the victim was concerned about the appearance that he failed in his marriage or his business. She said she did not leave the victim because she was not scared and thought things could improve. She said that she did not want to be alone and that she wanted her son to have a home, food, and to be able to go to school.

The Defendant testified that in May 2006, the victim was sleeping in a different bedroom, while she remained in the master bedroom. She said they sometimes had sex but did not sleep in the same bed afterwards. She said that her habit at this time was to bring her gun into the house and put it in her night stand or in her handbag beside the bed. She said the victim had admonished her for leaving the gun in the car.

The Defendant testified that in May 2006, the couple went to Kentucky and that the victim went to a club and found a man for the purpose of having sex with the Defendant. She said the victim became very violent, using his belt and telling her she was bad.

The Defendant testified that about three weeks before the victim's death, the victim had pulled a gun on her in the Pizza Inn parking lot. She said he threatened to kill her. She also said that during this time period, the Defendant told her he could have her killed for \$500 or that if she left him, he could have one of her children killed. She said she took the threat about killing a child seriously. She said there was another occasion when the victim pointed a gun to his head in front of the victim's son and girlfriend and threatened to kill himself.

The Defendant testified that she and the victim discussed divorcing. She said the victim planned to go to Dallas and told her she could go home and no one would know what happened. She said she talked with an attorney in Kentucky but did not file a divorce petition.

The Defendant testified that the weekend before the victim's death, she went to Kentucky to take her granddaughter home. She said she went to the bar where she met Mr. Napier. She said that because she had complained about the men the victim brought for her to have sex with, the victim had encouraged her to find someone she was comfortable with.

She said that she had a few drinks with Mr. Napier and then went to his house, where they had sex. She said the next day she visited her family then returned to Mr. Napier's home and spent the night, staying into the next day and returning home that night. She said she and Mr. Napier exchanged telephone numbers. She said she saved Mr. Napier's phone numbers in her cell phone as "Carla" in order to prevent the victim from questioning her about it. The Defendant testified that Mr. Napier offered to allow the Defendant and her son to stay at his house until she was able to make other living arrangements.

The Defendant testified that when she first came home from Kentucky, the victim was nice. She said that they argued later that evening about separating and that the victim was concerned about how this would look in the community. She said she did not go to bed until almost daylight, then went to work at 7:30 or 8:00 a.m. Monday morning. She said the victim started getting agitated on Monday. She said she did not get to bed at all on Tuesday night because she and the victim were arguing. She said the victim was anxious, pacing, and having mood swings. She acknowledged that she and Mr. Napier were communicating and that the victim was sometimes aware of this. She said she had informed the victim that she found someone in Kentucky because that was what she had been supposed to do. She acknowledged the text messages between herself and Mr. Napier that had been introduced into evidence. She said she expressed her gratitude to him and that she "loved the person he was for helping [her]." She said her only relationship with him was in the nature of friendship due to his willingness to help her and her son by providing a place for them to live.

The Defendant testified that on the night of the crime, she had placed her gun under her bed pillows when she came home from work. She said she and the victim had argued about separating. She said the victim later said he wanted to work things out and that it was confusing. She said that the victim left the home to take some things to the Defendant's son, who was spending the night away and that the victim returned around 9:30 or 10:00 p.m. with beer and food from Krystal. She said they sat outside and ate the food and drank beer. She said that she and the victim drank two beers each and that the victim told her he drank a six-pack of beer on the way home. She said that the victim became upset with her when she dropped a Diet Coke he brought her and that he took it away from her and brought her another one. She said that about 10:30 p.m., they went inside and the victim asked her to call her "304 friend," referring to Mr. Napier by his area code. She said the victim asked her questions about Mr. Napier's appearance. She said she called Mr. Napier, who told her not to upset the victim, but she eventually hung up because he refused to come to Tennessee. She said that she and the victim talked further and that he said he would take a shower and then leave to get a room. She said she went into her bedroom, placed a chair against the door, and called Mr. Napier again and told him that if she did not call back in a few hours, he should call 9-1-1 because the victim was "crazy going back and forth" or would kill her if she tried to leave him for someone else. She said the victim came to the bedroom door and

said he wanted to talk. She said that after he reassured her that he would never hurt her again, she allowed him to come in the room.

The Defendant testified that she and the victim talked about separating. She said the victim was unhappy and crying. She said he then became loud and pushing and said he loved her and wanted to have sex with her. She said that she told him he could not have sex because he had been drinking but that he kept pushing her, had her by her hair, pushed down her pajama pants and panties, pulled off her shirt, and pushed her down on the bed. She said that she was trying to be nice and that she asked to go to the bathroom, which he allowed her to do.

The Defendant testified that she put on a robe when she was in the bathroom but that when she went back into the bedroom, the victim was naked and asked her what she was doing. She said she tried to talk to him, but he would not listen, and she removed the robe. She said they were fighting and the victim pushed her and put his knees between her thighs. She said she asked him to stop, then bit him. She said she thought she also tried to scratch him. She said she told the victim that if he did not stop and let her leave, she would reveal that he had forged the signature on the loan document and have him jailed. She said that this was the first time she had ever made this threat to the victim and that it enraged him. She said he “became a different person,” choked her, and told her he was going to “f----- kill” her. She said they wrestled and she was able to get the gun. She said she told him she would shoot him if he did not stop. She said her fingers were tingling and her lips were numb. She said that he choked her harder and that she closed her eyes and shot because he was going to kill her and she did not want to die. She said she did not know how many shots she fired. She said that she heard a noise and was able to get up and that the victim was lying in the floor in another part of the house.

The Defendant testified that when she called 9-1-1, she thought the victim was still alive. She said she was still undressed at this point. She said that it “seemed like forever” before the police and ambulance arrived. She said the 9-1-1 personnel told her to go outside and wait for them and to put the gun on the floor. She said she put her robe on and followed these instructions. She said that after the police arrived, it took a long time for the rescue squad to arrive. She said she allowed the police to go into the house.

The Defendant testified that she was questioned “over and over” at her home and at the sheriff’s department and that she told them she was tired after being up for days, sick, and could not think clearly. She said that she thought at first that the victim had been shot and that he was at the hospital. She said she did not know the victim was dead until Pam Taylor informed her that she was being charged with murder. She said that when she was in Ms.



Taylor's office, she asked to go home but Ms. Taylor said, "Let's do this first," referring to giving a statement. She said she did not think she was free to leave.

The Defendant testified that she did not recall her photographs being taken on the night of the crime. She described the platinum chain she was wearing as "a little big" and acknowledged that it was not broken. She said some of her earrings were missing in the pictures. She acknowledged the ankle bracelet that she was wearing in the photographs. Using the photographs, she identified places on her body that she claimed were bruised when the victim had kicked her and pushed her with his fingers. She said some of the bruises did not show until after the photographs were taken and that her skin color from going to a tanning bed obscured some of the redness that resulted from the victim's actions. She said the victim was a "big man" and that she was five feet, five inches tall.

The Defendant testified that she did not talk to Mr. Napier again. She said she married Jerry Garcia on April 30, 2007. She acknowledged that the victim had been married to his previous wife for about twenty years, until she passed away. She agreed that the victim was a generous person.

The Defendant acknowledged her previous employment as a certified nurse assistant and a bartender. She acknowledged that there was semi-nude dancing at the establishment where she tended bar.

The Defendant testified that the fantasies involving others were the victim's, not hers. She denied that she wanted to act out the fantasies of having sex with men other than the victim.

The Defendant acknowledged that she had Eddie Taylor's telephone number saved in her cell phone as "Missy." She said Missy was Mr. Taylor's girlfriend. She denied that she did this to conceal Mr. Taylor's identity from the victim but stated that she did so because Missy was the person who answered the phone when one called the number. She admitted that she had Tim Marshall's phone number saved in her phone as "Rachel." She said Mr. Marshall repaired the Pizza Inn credit card machine. She said she saved his number with Rachel's name because "[w]e was trying to fix him up with Rachel." She said Mr. Marshall came to Pizza Inn to eat lunch a few times after she told him he could do so in exchange for his work on the credit card machine. She admitted that Pizza Inn employee Matt Luke's phone number was saved in her phone under "MMM," which she said was because he liked the music of "M&M" [sic].

The Defendant acknowledged that the safety was not engaged on her gun. She said the victim told her that if she were attacked, there would not be time to disengage the safety.

She said that when she fired the gun, she was lying on the bed with the victim on top of her. She said she closed her eyes and squeezed the trigger. She said she thought she shot twice, but she also said she did not remember exactly what happened. She said she did not think she kept shooting after the victim got up. She denied shooting the victim in the foyer and said that she did not fire the gun after she left the bed.

The Defendant testified that when she heard the victim fall in the foyer, she immediately called 9-1-1. She said that while she was on the phone, she looked at the victim multiple times and heard him making noises. She denied going into the foyer when she checked on the victim. She acknowledged that photographs showed blood on her feet and said it must have come from when she got off the bed.

The Defendant acknowledged that the evidence showed that it took an officer thirteen or fourteen minutes to arrive after her 9-1-1 call. She also acknowledged the medical examiner's testimony that the victim could have lived for about one-half hour with his injuries. She said she did not go to help the victim because she was afraid of him.

The Defendant admitted that she wanted out of the marriage. She said that although the victim had been violent with her before, the night of his death was the first time she had not been able to calm him. She said she killed the victim because she wanted to live, rather than because she wanted to be with Mr. Napier. She admitted that the victim threatened to take her son away from her based upon her drug use but said that she had not used drugs for two weeks before the victim's death.

Paulette Sutton testified as a rebuttal witness for the State. She said that the blood that appeared on the Defendant's feet in the photographs was blood spatter. She said that based upon the proof presented, there was no evidence to explain how the blood could have been spattered on the Defendant's feet in the bedroom but there was evidence to explain how the blood could have been spattered on the Defendant's feet in the foyer or dining room. She said there was proof to support that the victim was on his knees outside the bedroom when the arterial gush that hit the doorway began.

After receiving the proof, the jury found the Defendant guilty of first degree murder. The trial court imposed a life sentence.

## I

The Defendant challenges the sufficiency of the convicting evidence. The Defendant contends that the State failed to prove premeditation and intent. She argues that she killed

the victim in self-defense. The State responds that the proof of first degree murder was sufficient. We agree with the State.

In reviewing the sufficiency of the convicting evidence, our standard of review is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319 (1979). This means we do not reweigh the evidence but presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the State. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

As charged in this case, first degree murder is the unlawful, premeditated, and intentional killing of another. T.C.A. §§ 39-13-201, -202(a)(1) (2006). “Premeditation” is defined as an act done after the exercise of reflection and judgment. “Premeditation” means that the intent to kill must have been formed prior to the act itself. “It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.” T.C.A. § 39-13-202(d). The element of premeditation is a question for the jury and may be established by proof of the circumstances surrounding the killing. State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997). “‘Intentional’ refers to a person who acts intentionally with respect to . . . a result of the conduct when it is the person’s conscious objective or desire to . . . cause the result.” T.C.A. § 39-11-106(a)(18).

In the light most favorable to the State, the evidence shows that the Defendant made statements to Ashley Reynolds that she wanted to kill the victim. The Defendant had recently become involved with Clark Napier and was planning to move into his home. She wanted to end her relationship with the victim, and the victim had threatened to have the Defendant’s son taken away from her if she divorced the victim. When she came home from work before the murder, the Defendant took the gun into the house and placed it under the pillows on her bed. She retrieved the gun later and shot the unarmed victim four times – twice in the chest, once in the abdomen, and once in the back. The proof showed that these shots were fired both when the victim was in the bedroom and in a doorway. Other than calling 9-1-1, the Defendant did not attempt to help the victim, and there was proof she did not call 9-1-1 promptly. The jury had the opportunity to consider the Defendant’s claim of self-defense, and it rejected her testimony. Likewise, the photographs of the Defendant and the victim belie the Defendant’s claim that the two engaged in violent struggles before the murder. The evidence is sufficient to support the conviction.

## II

The Defendant raises related challenges to admission of Paulette Sutton's testimony. She argues that the court erred in allowing Ms. Sutton's testimony about the clotting, any drying of blood, and about the results of the tests she performed because they were based upon untrustworthy data.

The trial court conducted a hearing on the admissibility of Ms. Sutton's testimony. At this hearing, Ms. Sutton testified that she was a consultant in the field of blood stain pattern analysis. She said she had bachelor's and master's degrees and was licensed in Tennessee as a medical technologist and supervisor in medical technology. She said she held a national license from the American Society of Clinical Pathologists and had completed various training programs.

Ms. Sutton testified that the drying of blood is part of the field of blood stain pattern analysis. She said there are elements, including drying time of blood, that are prescribed for classes in stain pattern analysis by the International Association of Blood Stain Pattern Analysts. She said she was a member of SWGSTAIN, an invitational scientific working group on blood stain pattern analysis. She said she had taught many courses on blood stain analysis and the drying time of blood. She said she had been in the field since approximately 1983. Ms. Sutton identified two publications she had published or co-authored. One book contained a section on blood stain pattern analysis, and the other book was devoted entirely to the subject.

Ms. Sutton testified about her design and execution of the blood clot drying experiment she ultimately described in her trial testimony. She said she based her test upon published information about drying time of blood and the factors that affect it and said that she employed "the scientific method" in conducting the experiment. She acknowledged on cross-examination that although she had performed this particular test on other occasions, she had not previously testified about it. She said that as far as she knew, this was the first time such a test was the subject of testimony in a Tennessee court. When asked about publication of the test she performed, she said, "What I specifically did has not been published, but the elements that I address [have] been published." She said, however, that she had consulted with a co-author of her book, Principles of Blood Stain Pattern Analysis, about the experiment. She acknowledged that the results of the test she performed depended greatly on the ability to reproduce the conditions that existed at the crime scene. She said there would not be an error rate with the test as long as the person performing the test did not make a mistake. She also said that it was not uncommon for technicians such as herself to design an experiment to attempt to replicate crime scene conditions in order to give investigators an answer about drying time.

Ms. Sutton acknowledged that she did not go to the crime scene and that she relied on the photographs and statements from the officers who were present. She said that it was preferable for digital photography to be from a camera capable of at least three megapixel images. She said it was also preferable for the photographs to be taken looking directly at the stain or at a ninety-degree angle.

Ms. Sutton testified that clotted blood might or might not be dry. She admitted that there was a subjective element to determining visually whether a clot was dry. She said, however, that a lay person should be able to describe whether blood was wet or dry, or whether it was shiny or dull. She said that although the pictures were taken a couple of hours after the officers arrived at the scene, at least one of the officers described to her his observations at the time he arrived.

David Stapleton also testified at the admissibility hearing. He said he took the photographs of the crime scene with a two megapixel digital camera. He said the photographs accurately represented what he saw that night. He acknowledged differences in the shade of the floor in some of the photographs.

The defense called John Edwin May, who testified that he was a professional photographer with an undergraduate degree in photography and that he taught photography at a community college. He identified a Sony two megapixel camera as having been a good camera at the time it was introduced to the market, but he said the current amateur market offered cameras that were twelve megapixels. He said there would be a “huge difference in the quality.”

Mr. May testified that he reviewed the back of the photographs of the scene. He said he could tell from the numbers printed on the back of the pictures that adjustments were made to the exposure in the printing process. He also said that in reviewing the photographs, he could see variations in color of the same object in different photographs. He said there would be differences between a scene and photographs of the scene, but he acknowledged that he could not identify particular photographs of the scene in this case which did not accurately represent the scene.

Rules 702 and 703 of the Tennessee Rules of Evidence address the admissibility of opinion testimony of expert witnesses. Rule 702 states in pertinent part: “If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.” Tennessee Rule of Evidence 703 requires the expert’s opinion to be supported by trustworthy facts or data “of a type reasonably relied upon by experts in the particular field

in forming opinions or inferences upon the subject.” The determining factor is “whether the witness’s qualifications authorize him or her to give an informed opinion on the subject at issue.” State v. Stevens, 78 S.W.3d 817, 834 (Tenn. 2002). Evidence constitutes “‘scientific, technical, or other specialized knowledge,’ if it concerns a matter that ‘the average juror would not know, as a matter of course.’” State v. Murphy, 953 S.W.2d 200, 203 (Tenn. 1997) (quoting State v. Bolin, 922 S.W.2d 870, 874 (Tenn. 1996)). Questions regarding the admissibility, qualifications, relevancy, and competency of expert testimony are left to the discretion of the trial court. McDaniel v. CSX Transp., Inc., 955 S.W.2d 257, 263-64 (Tenn. 1997). A trial court’s ruling on the admissibility of such evidence may be overturned on appeal only if the discretion is exercised arbitrarily or abused. Stevens, 78 S.W.3d at 832.

Our review of Ms. Sutton’s testimony incorporates both her testimony at the hearing on the motion in limine and at the trial. See State v. Henning, 975 S.W.2d 290, 297-98 (Tenn. 1998) (holding that appellate court reviewing a motion to suppress evidence should consider the evidence adduced both at the suppression hearing and at trial). Ms. Sutton testified about her expert qualifications; the factual basis she used in formulating her opinions, including the facts upon which she relied in designing and performing a blood clot drying experiment; and her opinions regarding the length of time it took blood clots at the crime scene to dry.

In the present case, Ms. Sutton was qualified as an expert witness in blood stain pattern analysis. The Defendant has not challenged the trial court’s ruling that Ms. Sutton could testify as an expert witness. Rather, the Defendant contends that the trial court should have excluded Ms. Sutton’s testimony about the blood clot drying experiment because this evidence was substantially more prejudicial than probative because the test she performed was not one which was accepted in the scientific community. The Defendant urges this court to apply the non-exclusive factors identified by our supreme court for preliminary determination of the reliability and trustworthiness of scientific evidence, as set forth in McDaniel v. CSX Transportation. See McDaniel, 955 S.W.2d at 265.

McDaniel said:

A Tennessee trial court may consider in determining reliability: (1) whether scientific evidence has been tested and the methodology with which it has been tested; (2) whether the evidence has been subjected to peer review or publication; (3) whether a potential rate of error is known; (4) whether, as formerly required by Frye, the evidence is generally accepted in the scientific community; and (5) whether the expert’s research in the field has been conducted independent of litigation.

Id. The McDaniel court characterized these factors as useful in applying Tennessee Rules of Evidence 702 and 703. The supreme court has also said, however, “[The McDaniel] factors are not mandated in every case in which expert evidence is offered and should not be applied unless the factor or factors provide a reasonable measure of the expert’s methodology.” Brown v. Crown Equip., 181 S.W.3d 268, 272 (Tenn. 2005). Likewise, the supreme court has said, “The rigid application of the McDaniel factors to all expert testimony is problematic because all expert testimony may not ‘fit’ within the factors.” Id. at 277.

In the present case, the Defendant attempts to cast Ms. Sutton’s blood drying experiment as a novel scientific exercise. However, the evidence reflects that the test was a straight-forward experiment based upon known scientific factors. Ms. Sutton identified from published scientific sources the variables that were important in determining the amount of time it would take a blood clot to dry - temperature, humidity, amount of air flow, amount of blood, and form of blood. She then reproduced these factors as nearly as she could and determined that a blood clot of the size of one at the crime scene would have characteristics of drying after one hour and would be significantly dry in one and one-half hours. Although Ms. Sutton acknowledged that she was not able to find any published data about a particular experiment of this type, she was able to identify published data about the variables that would affect the outcome of the test, and she testified that she took these variables into account in designing and executing the procedure she followed using “the scientific method” to determine the time it took for a blood clot to dry.

The trial court made detailed findings in its ruling that the evidence was admissible. The court found that the evidence was relevant to a fact in issue, the time of injuries as compared with the time of death. It found that Ms. Sutton was qualified as an expert witness in serology and blood spatter and that her testimony would substantially assist the trier of fact. The court found that the amount of time it would take blood to clot and dry was not a matter that was within the knowledge of the average juror, although it would be something that could be observed by a layperson. The court found that with respect to peer review, Ms. Sutton had one of her colleagues review her experiment, although the court also noted that there was some level of practical, as opposed to expert, opinion involved. The court noted that the parameters applied to the experiment were generally accepted in the scientific community, although the experiment was done for the purpose of this case. The court also noted that the variables involved in the experiment were a subject for the weight of the evidence, not its admissibility.

Upon review, we hold that the trial court did not abuse its discretion in ruling that Ms. Sutton’s testimony would substantially assist the trier of fact in understanding the proof or in determining a fact in issue. See T.R.E. 702. Ms. Sutton expressed her opinion after conducting a controlled experiment that was based upon scientific data relied upon by experts

in the field of blood stain pattern analysis. See T.R.E. 703. We are unpersuaded by the Defendant's attacks on Ms. Sutton's conduct of her experiment, as well as the Defendant's attacks based upon the quality of the photography, skill of the photographer, and lack of training of the officers in observing the level of dryness of the blood at the crime scene. As the trial court correctly observed, these matters were proper considerations for the jury in assessing the weight to be accorded the evidence offered by Ms. Sutton. The Defendant is not entitled to relief.

### III

In her next issue, the Defendant argues that the trial court erred in allowing two State's witnesses, Paulette Sutton and Doctor Darinka Mileusnic-Polchan, to be exempt from the rule of sequestration. The State argues that the trial court did not abuse its discretion. We agree with the State.

Tennessee Rule of Evidence 615 provides

At the request of a party the court shall order witnesses, including rebuttal witnesses, excluded at trial or other adjudicatory hearing. In the court's discretion, the requested sequestration may be effective before voir dire, but in any event shall be effective before opening statements. The court shall order all persons not to disclose by any means to excluded witnesses any live trial testimony or exhibits created in the courtroom by a witness. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) a person designated by counsel for a party that is not a natural person, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause. This rule does not forbid testimony of a witness called at the rebuttal stage of a hearing if, in the court's discretion, counsel is genuinely surprised and demonstrates a need for rebuttal testimony from an unsequestered witness.

T.R.E. 615. The purpose of Rule 615 "is to prevent one witness from hearing the testimony of another and adjusting his testimony accordingly." State v. Harris, 839 S.W.2d 54, 68 (Tenn. 1992) (citing Smith v. State, 554 S.W.2d 648, 651 (Tenn. Crim. App. 1977)). In order for this court to grant relief based upon a Rule 615 violation, a defendant must show prejudice. See State v. Bane, 57 S.W.3d 411, 424 (Tenn. 2001).



The comments to Rule 615 state in pertinent part:

Under subsection (3) in the final sentence, the court has discretion to allow a witness to remain in the courtroom or even at counsel table if the witness's presence is "essential to the presentation of the party's cause." Such a witness might be an expert witness a lawyer needs to help the lawyer understand opposing testimony. Also, an expert witness who is to learn facts only through hearing testimony in court could be allowed to sit in the courtroom under this subsection. See Rule 703.

T.R.E. 615, Advisory Comm'n Cmts.

The trial court ruled that Ms. Sutton and Dr. Mileusnic-Polchan would be exempted from the rule of sequestration. It stated, "[T]he experts can stay in [the courtroom] to aid the attorney general in his case. Just like [the defense] could have [its] expert in here to aid[.]"

The Defendant argues that this was error. She alleges that Dr. Mileusnic-Polchan "attempted to fit her findings with those of Paulette Sutton for purposes of presentation to the jury." We are unpersuaded that the trial court abused its discretion in excusing these two expert witnesses from the rule of sequestration. The district attorney requested that they be allowed to remain in the courtroom to assist the prosecution in understanding the scientific aspects of the case. The location in the home where the victim's injuries were inflicted and the timing of the injuries were important issues. Further, the record does not reflect that there was any collusion on Dr. Mileusnic-Polchan's part in conforming her testimony to Ms. Sutton's. It merely reflects that the two experts consulted with each other before trial about whether the crime scene and the autopsy findings correlated. Specifically, Dr. Mileusnic-Polchan reviewed her autopsy findings to see whether the victim's injuries could be matched with a location at the crime scene where blood evidence suggested an arterial gush occurred. The Defendant is not entitled to relief.

#### IV

The Defendant argues that the trial court erred in allowing Ms. Sutton to testify as a rebuttal witness because her testimony did not rebut defense proof that was contrary to the Defendant's pretrial statements. She contends Ms. Sutton's testimony served only to reinforce the State's evidence. The State argues that Ms. Sutton's rebuttal testimony properly addressed the Defendant's testimony about the crime.

Ms. Sutton's rebuttal testimony was brief. She testified that the blood spatter shown on the Defendant's feet in photographs could not have happened in the bedroom but that it could be explained by the crime scene evidence in the foyer, which was contrary to the Defendant's testimony that she fired the shots in the bedroom and that she did not go near the victim when he was in the foyer. She also testified that a stain on the floor near the doorway was consistent with the victim's being on his knees facing the doorframe and that there was blood consistent with an arterial gush on the wall, which was contrary to the Defendant's testimony that she only shot the victim in the bedroom.

Rebuttal evidence includes "[a]ny competent evidence which explains or is in direct reply to, or a contradiction of, material evidence introduced by the accused." Nease v. State, 592 S.W.2d 327, 331 (Tenn. Crim. App. 1979). Rebuttal evidence must be relevant and material to the facts at issue. State v. Lunati, 665 S.W.2d 739, 747 (Tenn. Crim. App. 1983). The admissibility of rebuttal evidence lies in the trial court's discretion and will not be overturned on appeal unless there has been a clear abuse of discretion. See Stevens, 78 S.W.3d at 832.

We hold that the trial court did not abuse its discretion in allowing Ms. Sutton to testify as a rebuttal witness. Her testimony was relevant and material to controvert the Defendant's testimony. The Defendant is not entitled to relief.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

---

JOSEPH M. TIPTON, PRESIDING JUDGE